

2002

Pangea Technologies, Inc. dba Panurgy Corporation v. Internet Promotions, Inc. and Zions First National Bank: Brief of Appellant

Utah Supreme Court

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Craig A. Hoggan; Dart Adamson and Donovan; Attorney for Appellee.

David M. McGrath; Robert A. Goodman; Attorneys for Appellant.

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IN THE UTAH SUPREME COURT

PANGEA TECHNOLOGIES, INC.,)
d/b/a PANURGY CORPORATION,)

Plaintiff and Appellee,)

vs.)

INTERNET PROMOTIONS, INC.,)

Defendant,)

ZIONS FIRST NATIONAL BANK,)

Garnishee and Appellant.)

Supreme Court No. 20020445-SC
(District Court No. 010905106)

BRIEF OF THE APPELLANT

Appeal From a Decision and Judgment
of the Third District Court, Salt Lake County,
The Honorable Lee A. Dever

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Zions First National Bank

FILED
UTAH SUPREME COURT

SEP 12 2002

PAT BARTHOLOMEW
CLERK OF THE COURT

IN THE UTAH SUPREME COURT

PANGEA TECHNOLOGIES, INC.,)	
d/b/a PANURGY CORPORATION,)	
)	
)	
Plaintiff and Appellee,	)	Supreme Court No. 20020445-SC
	)	(District Court No. 010905106)
vs.)	
)	
INTERNET PROMOTIONS, INC.,)	
)	
Defendant,)	
)	
)	
ZIONS FIRST NATIONAL BANK,)	
)	
Garnishee and Appellant.)	

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Attorneys for Appellant
Zions First National Bank

COMPLETE LIST OF ALL PARTIES IN DISTRICT COURT

All parties to the proceeding in and before the Third District Court are listed in the caption of the case in this Court.

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JURISDICTION

Jurisdiction is proper under Utah Code Ann. § 78-2-2(3)(j). This is an appeal from a final decision and judgment of the Third District Court in and for Salt Lake County, the Honorable L.A. Dever presiding, granting judgment to Plaintiff.

ISSUES PRESENTED

1. Whether the District Court committed reversible error by failing to deem denied all matters alleged in Plaintiff's Reply "which would charge the garnishee with liability," as required by the express language of Rule 64D(i) of the Utah Rules of Civil Procedure.

Standard of Review: The proper interpretation of a rule of procedure is a question of law, and the reviewing court reviews the trial court's decision for correctness, granting no deference thereto. Dipoma v. McPhie, 2001 UT 61, ¶ 8, 29 P.3d 1225; Ostler v. Buhler, 1999 UT 99, ¶ 5, 989 P.2d 1073.

2. Whether the District Court committed reversible error by failing to grant a hearing on the issue of Zions Bank's liability to Plaintiff, as required by the express language of Rule 64D(i) of the Utah Rules of Civil Procedure.

Standard of Review: The proper interpretation of a rule of procedure is a question of law, and the reviewing court reviews the trial court's decision for correctness, granting no deference thereto. Dipoma v. McPhie, 2001 UT 61, ¶ 8, 29 P.3d 1225; Ostler v. Buhler, 1999 UT 99, ¶ 5, 989 P.2d 1073.

3. Whether the District Court committed reversible error in awarding attorney fees to the Plaintiff absent a contractual or statutory basis.

Standard of Review: Whether attorney fees should be awarded in a particular case is a question of law which is reviewed for correctness. Campbell v. State Farm Mut. Auto. Ins. Co., 2001 UT 89, ¶ 119, 432 Utah Adv. Rep. 44; Keith Jorgensen's, Inc. v. Ogden City Mall Co., 2001 UT App. 128, ¶ 11, 26 P.3d 872; Dejavue, Inc. v. U.S. Energy Corp., 1999 UT App. 355, ¶ 8, 993 P.2d 222, *cert. denied*, 4 P.3d 1289 (Utah 2000).

4. Whether the District Court committed reversible error in awarding attorney fees to the Plaintiff without designating the legal basis for its award.

Standard of Review: Whether attorney fees should be awarded in a particular case is a question of law which is reviewed for correctness. Campbell v. State Farm Mut. Auto. Ins. Co., 2001 UT 89, ¶ 119, 432 Utah Adv. Rep. 44; Keith Jorgensen's, Inc. v. Ogden City Mall Co., 2001 UT App. 128, ¶ 11, 26 P.3d 872; Dejavue, Inc. v. U.S. Energy Corp., 1999 UT App. 355, ¶ 8, 993 P.2d 222, *cert. denied*, 4 P.3d 1289 (Utah 2000).

DETERMINATIVE RULES

Rule 64D(i), Utah Rules of Civil Procedure:

Reply to answer of garnishee; trial of issues; judgment (pre-judgment or after judgment). the plaintiff or defendant may, within 10 days after the service of any answers to interrogatories, file and serve upon the garnishee and the other party to the principal action a reply to the whole or any part thereof and may also allege any matters which would charge the garnishee with liability except that all claims for exemptions to garnishment or non-ownership of property garnisheed shall be resolved under the

procedures as otherwise provided for in subdivision (h) herein. Such new matter in reply shall be taken as denied and the matter thus at issue shall be tried in the same manner as other issues of like nature. Judgment shall be entered upon the verdict or finding the same as if the garnishee had answered according to such verdict or finding. Costs shall be awarded in accordance with the provisions of Rule 54(d).

STATEMENT OF THE CASE

This appeal questions the propriety of the District Court's issuance of judgment against a garnishee, Zions Bank, without granting a hearing on the matter prior to rendering such judgment, in light of Rule 64D(i)'s express provision that "[s]uch . . . matter[s] in reply *shall be taken as denied* and the matter thus at issue *shall be tried* in the same manner as other issues of like nature." Emphasis added. This appeal further questions whether attorneys fees can be awarded to Plaintiff without a statutory or contractual basis for the same.

In December 2001, Plaintiff Pangea Technologies, Inc. ("Pangea" or "Plaintiff") served Zions Bank with a Writ of Garnishment (the "Writ") directing Zions Bank to hold all funds and accounts belonging to Defendant Internet Promotions, Inc. ("Internet Promotions") in order to satisfy a judgment against Internet Promotions in the amount of \$65,641.00. *See*, Writ of Garnishment, attached as pp. 1-2 to Appellant's Addendum.

Upon receipt of the Writ, Zions Bank determined that Internet Promotions had an account with Zions Bank containing \$10,089.00. Accordingly, Zions Bank answered the written Interrogatories to Garnishee, indicating that there was \$10,089.00 in Internet Promotions' account to satisfy the Garnishment. *See*, Zions Bank's Answers to Interrogatories to Garnishee, attached as pp. 3-5 to Appellant's Addendum. However,

Zions Bank was forced to amend its Interrogatory Answers when the money in the account was transferred out the account before it could be frozen and subsequently debited by Zions Bank. *See*, Zions Bank's Amended Answers to Interrogatories to Garnishee, attached as pp. 6-8 to Appellant's Addendum.

Plaintiff objected to Zions Bank's Amended Answers by filing, on or about December 21, 2001, a Reply to Answers of Garnishee and Request for a Hearing ("Plaintiff's Reply"). *See*, Plaintiff's Reply, attached as pp. 9-11 to Appellant's Addendum.

Without granting the hearing which was both requested by Plaintiff and required by Rule 64D(i) of the Utah Rules of Civil Procedure, the District Court (Judge Dever) issued a minute order dated February 11, 2002, in which judgment was granted against Zions Bank and in favor of Plaintiff, finding that Zions Bank had "improperly releas[ed] funds." *See*, Minute Entry dated February 11, 2002, attached as p. 12 to Appellant's Addendum.

On February 19, 2002, Zions Bank filed an Objection to—and Motion for Reconsideration of—Order Granting Judgment Against Zions Bank, in which Zions Bank requesting that the Court reconsider its decision and that it hold a hearing on the issue as required by Rule 64D(i). *See*, Appellant's Addendum at pp. 13-18.

By order dated March 30, 2002, the District Court issued its Ruling on Motion for Reconsideration and denied Zions Bank's Motion for Reconsideration and again granted judgment against Zions Bank, still without the hearing required by Rule 64D(i) of the

Utah Rules of Civil Procedure. *See*, Ruling on Motin [sic] for Reconsideration, attached as p. 19 to Appellant's Addendum.

A final Judgment was entered against Zions on May 18, 2002, in the amount of \$10,089.00, plus attorney fees and costs in the amount of \$2,370.30 for a total judgment of \$12,459.30. *See*, Judgment, attached as pp. 20-21 to Appellant's Addendum.

SUMMARY OF ARGUMENT

Rule 64D(i) of the Utah Rules of Civil Procedure provides that a Plaintiff may file a reply to a garnishee's answers to interrogatories, and that, in so doing, it may also "allege any matters which would charge the garnishee with liability." The Rule further provides that whenever such allegations are made by the Plaintiff, (1) "[s]uch new matter in reply shall be taken as denied," and (2) "the matter thus at issue shall be tried" before the court.

In this case, the District Court failed to follow the clear procedure established in Rule 64D(i), in that it neither deemed Plaintiff's allegations denied, nor held a hearing or trial to determine Zions Bank's liability.

Accordingly, the judgment rendered by the District Court against Zions Bank should be set aside and the matter remanded to the District Court for a hearing on the merits.

The District Court's judgment should not have included an award of attorney fees because there was no statutory or contractual basis for the same. Accordingly, that portion of the judgment awarding attorney fees should be reversed.

ARGUMENT

1. THE DISTRICT COURT ERRED IN GRANTING JUDGMENT TO PLAINTIFF WITHOUT HOLDING A HEARING ON THE MERITS.

Rule 64D(i), Utah Rules of Civil Procedure, provides as follows:

Reply to answer of garnishee; trial of issues; judgment (pre-judgment or after judgment). the plaintiff or defendant may, within 10 days after the service of any answers to interrogatories, file and serve upon the garnishee and the other party to the principal action a reply to the whole or any part thereof and may also allege any matters which would charge the garnishee with liability except that all claims for exemptions to garnishment or non-ownership of property garnisheed shall be resolved under the procedures as otherwise provided for in subdivision (h) herein. Such new matter in reply shall be taken as denied and the matter thus at issue shall be tried in the same manner as other issues of like nature. Judgment shall be entered upon the verdict or finding the same as if the garnishee had answered according to such verdict or finding. Costs shall be awarded in accordance with the provisions of Rule 54(d). (Emphasis added.)

Thus, Rule 64(D)(i) requires that when a reply is filed to a garnishee's answers to interrogatories, which reply seeks to impose liability upon the garnishee, the district court must (1) deem denied any allegation set forth therein, and (2) hold a hearing on the matter. Neither of these requirements was satisfied prior to the District Court granting judgment to Plaintiff and against the garnishee, Zions Bank. As a result, Zions Bank was wrongly denied its day in court.

The language of Rule 64D(i) is mandatory when it states that the "matter in reply shall be taken as denied and the matter thus at issue shall be tried" The District Court erred when it granted judgment against Zions Bank without complying with these mandatory prerequisites.

Thus, the judgment of the District Court should be reversed and this matter remanded to the District Court for a hearing on the merits.

2. THE DISTRICT COURT ERRED IN AWARDING ATTORNEYS FEES TO PLAINTIFF.

Utah follows the well-established “American Rule” that attorney fees are not recoverable in the absence of a contractual or statutory basis.¹ Amica Mutual Ins. Co. v. Schettler, 768 P.2d 950 (Utah App. 1989).

In the case at hand, there is no contract between the Plaintiff and Zions Bank nor is there a statute upon which to base an award of attorney fees. Based on the absence of any contractual or statutory basis for an award of attorney fees, an award of such fees to Plaintiff was error and should be reversed.

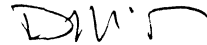
In addition, whenever attorney fees are awarded to a party, the District Court is obligated to designate the legal bases for its award. Id., at 966. Here, the District Court makes no such required designation; neither did the Court even an attempt to explain the basis of its decision to award attorney fees to Plaintiff. Accordingly, any attorney fees awarded by the District Court was error and should be reversed.

¹ The narrow exceptions to the American Rule recognized by Utah courts are limited to cases of breach of an insurance contracts and wrongful termination cases. *See, e.g., Canyon Country Store v. Bracey*, 781 P.2d 414 (Utah 1989) (insurance case), and Heslop v. Bank of Utah, 839 P.2d 828 (Utah 1992) (wrongful termination case). Because neither of these exceptions have any application to this case, the American Rule is applicable and each party to this case is obligated to bear its own attorneys fees.

CONCLUSION

Because the District Court granted judgment to Plaintiff in violation of the procedural requirements of Rule 64D(i), such judgment should be set aside and the matter remanded to the District Court for further proceedings. In addition, the award of attorney fees should be reversed because there is no statutory or contractual basis for the same and because the District Court failed to designate the basis of such award.

DATED this 12th day of September 2002.

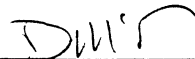


David M. McGrath
Attorney for Zions Bank

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September 2002, I mailed a copy of the attached **BRIEF OF THE APPELLANT** by first class mail with sufficient postage prepaid, to the following:

Craig A. Hoggan, Esq.
DART ADAMSON & DONOVAN
370 E. South Temple, Suite 400
Salt Lake City, UT 84111



David M. McGrath

IN THE UTAH SUPREME COURT

Plaintiff and Appellee,)
)

vs.)
)

Defendant,)
)

Garnishee and Appellant.)

Supreme Court No. 20020445-SC
(District Court No. 010905106)

ADDENDUM

Appeal From a Decision and Judgment
of the Third District Court, Salt Lake County,
The Honorable Lee A. Dever

Pursuant to Utah Rules of Appellate Procedure 24(a)(11), Appellant submits its Addendum as follows:

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Judgment (5/18/02)	20-21

Craig G. Adamson (0024)
Eric P. Lee (4870)
Craig A. Hoggan (8202)
DART ADAMSON & DONOVAN
370 East South Temple Suite 400
Salt Lake City Utah 84111
Telephone: (801) 521-6383
Facsimile: (801) 355-2513
Attorneys for Plaintiff

3 Dec 2001 TIME 11:47 AM
NO 010905 T. H. H. S. W.
UPON J. Blanchard (Agent)
CONSTABLE REITZ, SALT LAKE COUNTY, UTAH
DEPUTY [Signature]
225-5445

01-1905

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

PANGEA TECHNOLOGIES, INC., d/b/a	:	Case No.: 010905106
PANURGY CORPORATION,	:	
	:	WRIT OF GARNISHMENT
Plaintiff,	:	(Not for garnishment of earnings
	:	for personal services)
vs.	:	
	:	
INTERNET PROMOTIONS, INC.,	:	
	:	
Defendant	:	

STATE OF UTAH TO: Zion's First National Bank, 10 East South Temple, 5th Flr.,
Salt Lake City, Utah 84133.

You are hereby ordered and commanded by the Court to hold, until further order of this Court, and not pay to defendant all money and other personal property of the defendant in your possession or under your control, whether now due or hereafter to become due, which are not exempt from execution, up to the amount remaining due on the judgment or order, plus court approved costs in this matter (or in the case of a prejudgment writ, the amount claimed to be due), being \$65,641.00.

You are required to answer the attached questions called interrogatories, and file your answer with the Clerk of the court within five (5) business days of the date this Writ is served upon you. The address of the Clerk is: 450 South State, P.O. Box 1860, Salt Lake City, Utah 84114-1860. You are also required to send a copy of your answers to the plaintiff at the following address: Craig A. Hoggan, 370 East South Temple, Suite 400, Salt Lake City, Utah 84111.

If you fail to answer, the judgment creditor may ask the Court to make you pay the amount you should have withheld. If you are indebted to or hold property or money belonging to the defendant, you shall immediately mail by first class mail a copy

of the Writ of Garnishment and your answers to the interrogatories, the Notice of Garnishment and Exemptions and two (2) copies of the Request for Hearing to the defendant and to anyone else who, according to your records, may have an ownership or other interest in the property or money at the last known address of the defendant or such other persons shown on your records at the time of the service of this Writ. In lieu of mailings, you may hand-deliver a copy of these documents to the defendant and other persons entitled to copies.

YOU MAY DELIVER to the officer serving this Writ the portion of defendant's property or money to be held as shown by your answers. You will then be relieved from further liability in this case unless your answers are successfully disputed. You may, in the alternative, hold the money until further order of the Court.

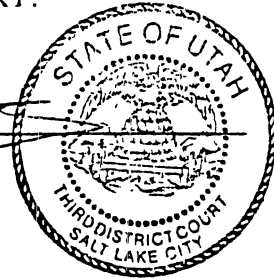
If you do not receive an order from the Court regarding this Writ and the property you held pursuant to this Writ within sixty (60) days after filing your answers to the attached interrogatories, this Writ shall expire and you may ignore it.

DATED: 29, November 2001

CLERK OF THE COURT:

By: _____

Deputy Clerk



INTERROGATORIES TO GARNISHEE

Civil No. 010905106

Judge L.A. Dever

(Not for earnings for personal services)

(Give your answers in the spaces provided and attach additional sheets if necessary.)

1. Are you indebted to the defendant either in property or money?

ANSWER: Yes

2. What is the nature of the indebtedness?

ANSWER: Checking

3. What is the total amount of the indebtedness?

ANSWER: 10,089.00

4. Is the indebtedness now due?

ANSWER: yes

5. If not, when is it to become due?

ANSWER: _____

6. Have you in your possession, in your charge or under your control any property or money in which defendant has an interest other than as set forth in your answer above?

ANSWER: _____

7. If so, identify or describe such property or money and value of defendant's interest in it.

ANSWER: _____

Identification
or Description

Amount or Value of
Defendant's Interest

8. Do you know of any debts owing or which may be owing from any other person to defendant, whether due or not, or of any property of defendant or in which defendant has an interest in any other person's possession or control?

ANSWER: _____

9. If so, state the full particulars thereof.

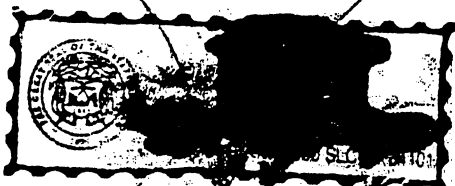
ANSWER: _____

I also swear or affirm that the following other persons were also provided a copy of the Writ of Garnishment, Answers to Interrogatories, Notice of Garnishment and Exemptions, and Request for Hearing:

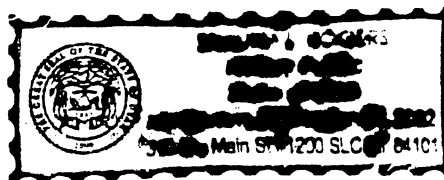
Person	Address	Date Mailed (If Mailed)	Date Delivered (if Hand-delivered)
Dart, Adamson Donovan	SLC, UT 8800	12/4/01	
Clerk of the Court	SLC, UT	12/4/01	

Janice W. Blanchard
Signature of Garnishee or
Authorized Signature on Behalf of Garnishee

SUBSCRIBED AND SWORN to before me this 4 day of December 2001.
2001.



Shauna D. Rogers
NOTARY PUBLIC



HAKIKU ANSWERS

INTERROGATORIES TO GARNISHEE

(Not for Earnings for Personal Services)

Page 1 of 3

Case No: _____

Defendants: _____

(Give your answers in the spaces provided and attach additional sheets if necessary.)

1. Are you indebted to the Defendants either in property or money?

ANSWER: NO - NO Funds Available

2. What is the nature of the indebtedness?

ANSWER: _____

3. What is the total amount of the indebtedness?

ANSWER: _____

4. Is the indebtedness now due?

ANSWER: _____

5. If not, when is it to become due?

ANSWER: _____

6. Have you in your possession, in your charge, or under your control any property or money in which Defendants have an interest other than as set forth in your answers above?

ANSWER: _____

7. If so, identify or describe such property or money and value of Defendants' interest in it.

Identification or Description

Amount or Value of Defendants' Interest

8. Do you know of any debts owing or which may be owing from any other person to Defendants, whether due or not, or of any property of Defendants or in which Defendants have an interest in any other person's possession or control?

ANSWER: _____

(RETURN ORIGINAL TO COURT)

INTERROGATORIES TO GARNISHEE - CONTINUED
(Not for Earnings for Personal Services)
Page 2 of 3

Case No: _____

Defendants: _____

9. If so, state the full particulars thereof.

Identification or Description of Debt Right or Item	Location	Third Party Debtor, Holder or Custodian	Amount or Value of Defendants' Interest

10. Have you retained or deducted from the property or money in which are indebted to Defendants any amount in payment, in full or in part, of a debt owed by Defendants or Plaintiff to you?

ANSWER: _____

11. If so, state the amount so retained or deducted and the person indebted for whom the amount has been retained or deducted.

ANSWER: _____

12. Describe any information provided to you by or on behalf of Defendants regarding Defendants' property, bank accounts, bank relationships, employment, and all other financial information, e.g., via financial statements, applications, etc. In lieu of a written response to this interrogatory request, you may provide copies of any such information provided to you by or on behalf of Defendants with your response to these interrogatories.

ANSWER: _____

(RETURN ORIGINAL TO COURT)

INTERROGATORIES TO GARNISHEE - CONTINUED
(Not for Earnings for Personal Services)
Page 3 of 3

Case No: _____

Defendants: _____

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

I do swear or affirm that I am the garnishee or person authorized to execute this document and make this verification on behalf of garnishee and that the answers to the foregoing interrogatories are true to the best of my information and belief.

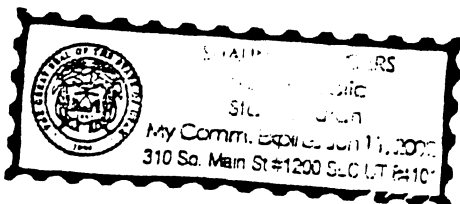
I also swear or affirm that I mailed by first class mail, or hand-delivered a copy of the Writ of Garnishment, Answers to Interrogatories, Notice of Garnishment and Exemptions and two (2) copies of a Request for Hearing, to the Defendants at 2958 Windsor Ln Bountiful, UT on the 7 day of December, 2001. 84010-4424

I also swear or affirm that the following other persons were also provided a copy of the Writ of Garnishment, Answers to Interrogatories, Notice of Garnishment and Exemptions and Request for Hearing:

Person	Address	Date mailed or delivered
Dart, Adamson & Donovan	SLE, UT	12/7/01
Clerk of the Court	SLE, UT	12/7/01

Janina N. Blanchard
Signature of Garnishee or Authorized
Signature on Behalf of Garnishee

SUBSCRIBED AND SWORN to before me this 7 day of December, 2001.



Sharon A. Rogers
NOTARY PUBLIC
My commission expires:

(RETURN ORIGINAL TO COURT)

Craig G. Adamson (0024)
Eric P. Lee (4870)
Craig A. Hoggan (8202)
DART ADAMSON & DONOVAN
370 East South Temple Suite 400
Salt Lake City Utah 84111
Telephone: (801) 521-6383
Facsimile: (801) 355-2513
Attorneys for Plaintiff

02 JUN 30 PM 3:13
SALT LAKE COUNTY DEPARTMENT
BY De
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

PANGEA TECHNOLOGIES, INC., d/b/a	:	Case No.: 010905106
PANURGY CORPORATION,	:	
	:	REPLY TO ANSWERS OF GARNISHEE
Plaintiff,	:	AND REQUEST FOR A HEARING
	:	
vs.	:	
	:	
INTERNET PROMOTIONS, INC.,	:	Judge: LA Dever
	:	
Defendant	:	

Pursuant to Utah Rule of Civil Procedure 64(d)(i), plaintiff Pangea Technologies, Inc.,
/b/a Panurgy Corporation hereby files this Reply to Answer to Garnishee Zions First National
ank.

FACTS

1. On December 3, 2001, at 11:46 a.m. plaintiff served Zions First National Bank
Zions") with a Writ of Garnishment commanding Zions to hold all funds and accounts
longing to defendant Internet Promotions, Inc., in order to satisfy a judgment in the amount of
5,641.00. See Writ of Garnishment attached as Exhibit A.
2. In Answers to Interrogatories dated December 4, 2001, Zions indicated that it was
possession of \$10,089.00. See Interrogatories to Garnishee attached as Exhibit B.

3. After sending out the Interrogatories to Garnishee, Zion's allowed defendant's President, Fred Ninow, to wire transfer the \$10,089.00 from the Internet Promotions account into his personal Zion's bank account.

4. On December 7, 2001, Zions completed Amended Answers to Interrogatories indicating that no funds are now available. See Amended Answers to Interrogatories attached as Exhibit D.

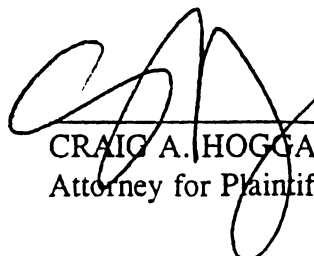
5. Plaintiff's counsel received the Amended Answers on December 14, 2001.

ARGUMENT

Zions improperly released \$10,089.00 to defendant Internet Promotions, Inc. Upon service of the Writ of Garnishment, Zions was commanded by the Court to hold all funds belonging to defendant. As is indicated by Zions' Answers to Interrogatories, Zions committed to hold the funds. However, Zions violated the writ of garnishment by allowing Internet Promotions to wire transfer the \$10,089.00 from the Internet Promotions bank account to a bank account belonging to Internet Promotions' President, Fred Ninow. As a result of Zion's failure to comply with the Writ of Garnishment, plaintiff is now entitled to a garnishee judgment against Zions for \$10,089.00 along with the fees and costs incurred as a result of Zions failure to comply with the Writ of Garnishment.

DATED this 21 day of December, 2001.

DART ADAMSON & DONOVAN



CRAIG A. HOGGAN
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following individual(s), via first class mail, this 21st day of December, 2001:

Zions First National Bank
10 East South Temple, 5th Floor
Salt Lake City, UT 84133

Beth L. Quintana, Registered Agent
Internet Promotions, Inc.
4326 South Jupiter Drive
Salt Lake City, UT 84124

A handwritten signature in cursive script, reading "Lunelle Barron", written over a horizontal line.

THIRD DISTRICT COURT SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

PANGEA TECHNOLOGIES INC,	:	
Plaintiff,	:	PLF'S REQUEST FOR A HEARING
	:	
vs.	:	Case No: 010905106
	:	
INTERNET PROMOTIONS INC,	:	Judge: L A DEVER
Defendant.	:	Date: 02/11/2002

Clerk: debbiep

On order of Judge Dever, Plf is granted judgment against Zions Bank for \$10,089.00 plus fees and costs for improperly releasing funds. c/o atty for Plf to prepare an order for the court to sign.

David M. McGrath (6276)
Robert A. Goodman (4580)
Kami L. Peterson (7959)
10 East South Temple, 5th Floor
P.O. Box 30709
Salt Lake City, UT 84130
Telephone: (801) 529-8177

Attorneys for Zions Bank

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

PANGAEA TECHNOLOGIES, INC.,)	
	)	OBJECTION TO—AND
Plaintiff,	)	MOTION FOR
	)	RECONSIDERATION OF—
vs.	)	ORDER GRANTING
	)	JUDGMENT AGAINST ZIONS
INTERNET PROMOTIONS, INC.,	)	BANK
	)	Civil No. 010905106
Defendant.	)	Judge Dever
)	

Zions Bank hereby objects to the minute entry order issued by this Court on or about February 12, 2002, granting “judgment against Zions Bank for \$10,089.00, plus fees and costs for improperly releasing funds.” A copy of the Court’s minute entry is attached hereto as Exhibit A.

Zions Bank further moves this Court to reconsider the minute entry inasmuch as it is contrary to the provisions and procedures established in Utah Rule of Civil Procedure 64D(i), and is not justified under the Uniform Commercial Code which governs this matter.

FACTUAL BACKGROUND

1. On December 3, 2001, at approximately 11:46 a.m., Plaintiff Pangea Technologies, Inc. ("Pangea" or "Plaintiff") served Zions Bank, through its agent Tania Blanchard, with a Writ of Garnishment (the "Writ") directing Zions Bank to hold all funds and accounts belonging to Defendant Internet Promotions, Inc. ("Defendant") in order to satisfy a judgment in the amount of \$65,641.00.

2. Upon receipt of the Writ, Ms. Blanchard undertook to research Zions Bank's records to ascertain whether Defendant in fact had an account with Zions Bank and the amount in such account(s). *See*, Affidavit of Tania Blanchard ("Blanchard Aff."), filed herewith.

3. Ms. Blanchard's research revealed that Defendant had an account with Zions Bank and that there was \$10,089.00 in such account. *Id.*

4. At approximately 1:40 p.m. on December 3, 2001, less than two hours after service of the Writ, Ms. Blanchard telephoned the Zions Bank branch where the Defendant's account was located and directed that branch to place a freeze on Defendant's account. *Id.*

5. Zions Bank records indicate that approximately five minutes later, at 1:45 p.m., funds were wired out of the Defendant's account from a branch other than that where Defendant's account was held. *See*, Exhibit 1 to Blanchard Aff. This information was not known to Ms. Blanchard until December 7, 2001. Blanchard Aff.

6. Following her call to the branch where Defendant's account was located, on December 3, 2001, Ms. Blanchard caused an instruction to be given to the Zions Bank ACH Department directing that the Defendant's account be debited in the amount of \$10,089.00. *Id.*

7. The next day, December 4, 2002, Ms. Blanchard answered the written Interrogatories to Garnishee, indicating that there was \$10,089.00 in Defendant's account which

was available to satisfy the Writ. As of that time, this was the information available to Ms. Blanchard. *Id.*

8. On December 7, 2001, however, Zions Bank's ACH department returned the debit instructions unsatisfied due to insufficient funds in the Defendant's account. *Id.*

9. Based on this information, Ms. Blanchard immediately prepared Amended Answers to Interrogatories to Garnishee, and served the same on Plaintiff on December 7, 2001. *Id.*

ARGUMENT

The minute entry directing that an Order should be issued granting judgment against Zions Bank should be reconsidered and set aside because (1) the procedures of Rule 64D have not been followed in connection with this matter, and (2) because Zions Bank did not improperly release the funds in question.

A. RULE 64D REQUIRES THAT A HEARING BE HELD ON PLAINTIFF'S REPLY TO ANSWER OF GARNISHEE PRIOR TO ADJUDICATION OF SAME.

Rule 64D(i) of the Utah Rules of Civil Procedure states, in relevant portion, as follows:

The plaintiff or defendant may, within 10 days after the service of any answers to interrogatories, file and serve upon the garnishee and the other party to the principal action a reply to the whole or any part thereof and may also allege any matter which would charge the garnishee with liability. . . . *Such new matter in reply shall be taken as denied and the matter thus at issue shall be tried in the same manner as other issues of like nature.* Judgment shall be entered upon the verdict or finding the same as if the garnishee had answered according to such verdict or finding.

Emphasis added. Thus, according to Rule 64D, any matter alleging liability of the garnishee (here, Zions Bank) is automatically deemed "DENIED" and "shall be tried" before the Court prior to a finding or judgment of liability. Here, this procedure was not followed. Indeed, the Plaintiff itself only requested, and properly so, a hearing on this matter. The first and only action

following the Plaintiff's Reply and Request for Hearing was the Court's sua sponte minute entry directing that an Order be prepared granting judgment against Zions Bank.

Zions Bank is entitled under the Rules to an evidentiary hearing on this issue to determine whether it did in fact act unreasonably in releasing the funds in question. Until such an evidentiary hearing is conducted it is improper for an order to issue.

B. ZIONS BANK DID NOT IMPROPERLY RELEASE THE FUNDS IN QUESTION.

For a determination of whether Zion Bank improperly released the funds, attention must be turned to the provisions of the Utah Uniform Commercial Code. UCA § 70A-4a-502(2) provides, in relevant portion, as follows:

For the purposes of determining rights with respect to the creditor process,¹ if the receiving bank² accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order . . . , unless the creditor process is served at a time and in a manner affording the bank a *reasonable opportunity* to act on it before the bank accepts the payment order.

Emphasis added. Thus, the wire transfer has priority over the Writ unless Zions Bank had a reasonable opportunity to act on the Writ prior to honoring the wire transfer.

Comment 1 of UCC section 4a-502 (from which UCA § 70A-4a-502 is adopted) states as follows:

If creditor process is served on the bank with respect to the account before the bank accepts the order but the bank employee responsible for the acceptance was not aware of the creditor process at the time the acceptance occurred, it is unjust to the bank to allow the creditor to take the credit balance on which the bank may have relied. Subsection b ["(2)" in Utah's version] allows the bank to obtain payment from the sender's account in this case.

¹ "Creditor process is defined as "levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor." UCA § 70A-4a-502(1).

² "Receiving Bank" is defined as "the bank to which the sender's instruction is addressed." UCA § 70A-4a-502(1). In this case, Zions Bank.

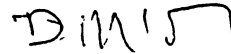
In this case, Zions Bank, through its employee Ms. Blanchard, acted promptly and without delay in processing the Writ and notifying the branch where the account was held to place a freeze on Defendant's account. All of this was accomplished in less than two hours time. However, five minutes after Ms. Blanchard placed her call to the branch where the account was held, but before that branch had reasonable opportunity to actually place the freeze on the account, the money was wired out of the account. Thus, the bank employee responsible for accepting the wire instruction was, at the time the wire transfer was accepted, unaware of the Creditor Process (*i.e.*, the Writ) relating to the Defendant's account.

UCA § 70A-4a-502(b) was designed to address this exact situation, and it resolves this matter unambiguously in favor of Zions Bank. Zions Bank must, under the statutory framework of the law, be given a "reasonable opportunity" to act on the Writ before it can be charged with responsibility thereunder. Certainly a "reasonable opportunity" would require not only sufficient time for a bank employee exercising reasonable diligence to research the account information and communicate the same to the branch where the account is held, but must also include a reasonable time for the branch to act on such information. Here, Zions Bank acted within a reasonable amount of time and it cannot be said that it improperly released the funds to the Defendant.

CONCLUSION

For the reasons stated herein above, it is respectfully requested that this Court (1) rescind its sua sponte decision to grant judgment against Zions Bank, and (2) that it schedule an evidentiary hearing as provided for under Rule 64D(i) of the Utah Rules of Civil Procedure.

DATED this 14th day of February 2002.

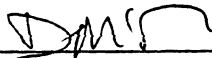


David M. McGrath
Attorney for Zions First National Bank

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February 2002, I mailed, postage prepaid, a true and correct copy of the foregoing **OBJECTION TO—AND MOTION FOR RECONSIDERATION OF—ORDER GRANTING JUDGMENT AGAINST ZIONS BANK** to the following:

Craig G. Adamson, Esq.
Eric P. Lee, Esq.
Craig A. Hoggan, Esq.
DART ADAMSON & DONOVAN
370 E. South Temple
Suite 400
Salt Lake City, UT 84111



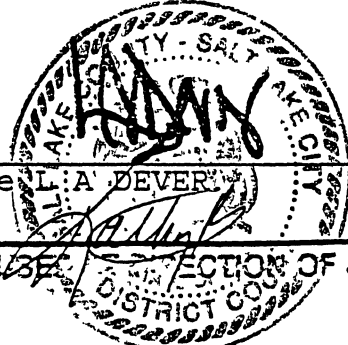
THIRD DISTRICT COURT SALT LAKE COURT
SALT LAKE COUNTY, STATE OF UTAH

PANGEA TECHNOLOGIES INC,	:	
Plaintiff,	:	RULING ON MOTIN FOR
	:	RECONSIDERATION
	:	
vs.	:	Case No: 010905106
	:	
INTERNET PROMOTIONS INC,	:	Judge: L A DEVER
Defendant.	:	Date: 3/30/2002

Clerk: kathrynb

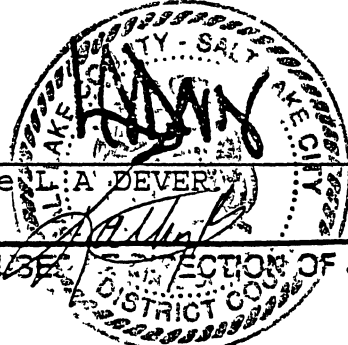
The Court denies Motion for Reconsideration of - Order granting judgment against Zions Bank.

Judge L A DEVER

By  SECTION OF JUDGE

STAMP USE

DISTRICT COURT OF JUDGE



COP

Craig G. Adamson (0024)
Eric P. Lee (4870)
Craig A. Hoggan (8202)
DART ADAMSON & DONOVAN
370 East South Temple, Suite 400
Salt Lake City Utah 84111
Telephone: (801) 521-6383

Attorney for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

---oooOooo---

PANGEA TECHNOLOGIES, INC., d/b/a	:	
PANURGY CORPORATION,	:	JUDGMENT
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	Civil No. 010905106
INTERNET PROMOTIONS, INC.,	:	
	:	Judge L.A. Dever
Defendant.	:	

---oooOooo---

Based on the Court's February 22, 2002 Order,

IT IS HEREBY ORDERED, JUDGED AND DECREED that Plaintiff recover from Zions First National Bank the sum of \$10,089.00 along with attorney's fees and costs in the amount of \$2,370.30 for a total judgment of \$12,459.30, together with interest at the statutory rate until paid. In addition, it is further ordered that this judgment shall be augmented in the amount of reasonable costs

and attorney's fees expending and collecting said judgment by execution or otherwise as shall be established by affidavit.

DATED this 18 ^{May} day of ~~April~~, 2002.

BY THE COURT:



L.A. DEVER, District Judge

By 
CERTIFICATE OF MAILING ACTION OF JUDGE

I hereby certify that on the 20th day of April, 2002, I caused to be mailed a true and correct copy of the foregoing to the following:

Beth L. Quintana, Registered Agent
Internet Promotions, Inc.
4326 South Jupiter Drive
Salt Lake City, Utah 84124

Zions First National Bank
10 East South Temple
5th Floor
Salt Lake City, UT 84133